

Translation

PATENT COOPERATION TREATY

PCT/EP2003/006121



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 039PCT0897 (FO)	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/006121	International filing date (day/month/year) 11 June 2003 (11.06.2003)	Priority date (day/month/year) 12 June 2002 (12.06.2002)
International Patent Classification (IPC) or national classification and IPC C07K 14/415		
Applicant FRAUNHOFER-GESELLSCHAFT ZUR FÖRDERUNG DER ANGEWANDTEN FORSCHUNG E.V.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 12 November 2003 (12.11.2003)	Date of completion of this report 06 May 2004 (06.05.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
 pages 1-8, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☒ the claims:
 pages _____, as originally filed
 pages _____, as amended (together with any statement under Article 19
 pages _____, filed with the demand
 pages 1-21, filed with the letter of 20 April 2004 (20.04.2004)
- ☒ the drawings:
 pages 1/5-5/5, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

1 The amendment submitted with the letter of 19 April 2004 introduces substantive matter which, contrary to PCT Article 34(2)(b), goes beyond the disclosure in the international application as filed. The amendment is as follows: addition of the wording "wherein the residual phospholipid content is $\leq 0.4\%$ " to independent claim 1. The reason is: in the application as filed this wording is related to a specific embodiment (and therefore to the conditions specific thereto) (see page 5, line 18 to page 8, line 14 of the present application). Consequently, addition of the indicated wording represents a broadening of the scope of the application as filed.

1.1 The present international examination has therefore been conducted on the basis of the application as filed.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims		YES
	Claims	1-11	NO
Inventive step (IS)	Claims		YES
	Claims	1-11	NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO

2. Citations and explanations

1 Reference is made to the following documents:

D1: WO-A-86 05659

D2: US-A-4 366 097

D3: DATABASE WPI Section Ch, Week 198248 Derwent Publications Ltd., London, GB; Class D13, AN 1982-03881J XP002252995 & SE 8 201 538 A (GENERAL FOODS CORP), 11 October 1982 (1982-10-11)

D4: US-A-4 370 267

D5: WO-A-97 12524

D6: US-A-5 322 839

D7: US-A-6 005 076

D8: US-A-4 307 014

D9: US-A-4 697 004

D10: US-A-4 346 122

D11: GB-A-1 574 110

D12: EP-A-0 148 600

D13: FR-A-2 354 054

D14: US-A-3 966 702

D15: US-A-3 635 726

D16: EP-A-0 501 117

2 Each of D1, D2-D5 and D9-D16 anticipates the subject matter of claims 1-11 of the present application (see

page 1, lines 3-7, page 3, lines 17-28, page 5, lines 9-28 and example 1 of D1; column 1, line 9 to column 2, line 41 and claims 1 and 2 of D2; abstract of D3; column 3, line 43 to column 6, line 68, example 3 and claim 1 of D4; page 3, paragraph 2 and claims 1, 4-6, 8, 13 and 16-19 of D5; column 1, lines 6-7, column 2, lines 34-46, example 1 and claim 1 of D9; column 3, lines 8-47, example 1 and claims 1, 2 and 9 of D10; examples 5-10 and claims 1-3, 7, 12 and 13 of D11; page 1, lines 3-6, page 2, lines 14-19 and claims 1, 4, 10 and 17-19 of D12; page 1, line 2 to page 2, line 22, page 3, lines 18-27 and claims 1-6 and 19-21 of D13; column 1, lines 11-40, column 2, lines 31-54, example 1 and claims 1, 5 and 36-38 of D14; column 1, lines 3-15, column 2, lines 25-44 and example 1 of D15; and page 1, lines 3-18, page 5, lines 31-45 and claims 1 and 6-9 of D16).

Each of D6-D8 anticipates the subject matter of claims 1-10 of the present application (see column 2, lines 32-65, and example 1 of D6; column 2, lines 5-35, example 1 and claim 1 of D7; and column 1, lines 36-49, examples 1 and 2 and claim 1 of D8).

- 3 The subject matter of claims 1-11 of the present application is industrially applicable in the food and feed industries (PCT Article 33(4)).
- 4 Contrary to PCT Rule 5.1(a)(ii), the description does not cite D1-D16 or indicate the relevant prior art disclosed therein.
- 5 The word for feed industry should be capitalized in claim 11 of the present application [in German]. The term "protein extraction" should be substituted for

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"protein extractions" in claim 2 of the present application.